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CITY OF LEMON GROVE

"Best Climate On Earth"

Office of the Mayor

August 24, 2010

Honorable Kevin A. Enright, Presiding Justice
Superior Court, San Diego
Main Courthouse, Department P
201 W. Broadway
San Diego, CA 92101

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SAN DIEGO
COUNTY GRAND JURY

Re: Response to Grand Jury Findings and Recommendations:
"Medical Marijuana in San Diego"

Dear Judge Enright:

This letter is the City of Lemon Grove's response to the Grand Jury Report entitled "Medical Marijuana in San Diego."

Finding No. 5: *Adopting cost neutral zoning and land use ordinances is an effective method for licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the unincorporated areas and eighteen cities of San Diego County.*

Response to Finding No. 5:

The City of Lemon Grove disagrees with Finding No. 5. The licensing of medical marijuana distribution businesses by a local city is unlikely to be cost neutral and/or effective at regulating such businesses, profit or non-profit. According to research performed by the City Attorney, the history of medical marijuana regulation by cities has indicated the opposite result. Most, if not all, cities that have regulated medical marijuana distributors have encountered significant regulatory problems and the costs have outweighed the fees received. This finding is contradicted by Finding No. 11, which states that the imposition of regulatory fees "could create a financial hardship" for some distributors. The establishment of a comprehensive program for medical marijuana distributors will increase the strain on the City's General Fund. Currently, the City of Lemon Grove is streamlining its programs and cutting back General Fund services. The establishment of a new regulatory program supported, at least in part, by the General Fund is not in the best interests of the public. As of the date of this letter, no public correspondence or testimony has been received by the City Council requesting the adoption of a comprehensive regulatory program regulating the distribution of medical marijuana.

Finding No. 6: *The recommendations of the City of San Diego's Medical Marijuana Task Force for zoning and land use ordinances for cooperatives and collectives may serve as a model for adoption by other cities in the County.*

Response to Finding No. 6:

The City of Lemon Grove disagrees with Finding No. 6. The licensing of medical marijuana distribution businesses by a local city is unlikely to be cost neutral and/or effective at regulating such businesses, profit or non-profit. The history of medical marijuana regulation by cities has



indicated the opposite result. Most, if not all, cities that have regulated medical marijuana distributors have encountered significant regulatory problems and the costs have outweighed the fees received. The establishment of a comprehensive program for medical marijuana distributors will increase the strain on the City's General Fund. Currently, the City of Lemon Grove is streamlining its programs and cutting back General Fund services. The establishment of a new regulatory program supported, at least in part, by the General Fund is not in the best interests of the public. No public correspondence or testimony has been received by the City Council requesting the adoption of a comprehensive regulatory program regulating the distribution of medical marijuana.

While the City of San Diego's Medical Marijuana Task Force may be considered a model for the City of San Diego, the City of Lemon Grove has different legislative priorities and different resources than the City of San Diego. The adoption of a set of legislative priorities designed for a City of more than one million residents would not be an efficient use of resources nor meet currently well defined legislative priorities established by the Lemon Grove City Council designed to meet the current needs of the residents of Lemon Grove.

Finding No. 7: *Annual financial reporting and periodic auditing of cooperatives and collectives, predominantly of cash operations, are not currently required in San Diego County.*

Response to Finding No. 7:

To the extent that the City of Lemon Grove does not conduct "annual financial reporting and periodic auditing" of medical marijuana distribution operations, the City agrees with the finding.

Finding No. 9: *The lack of zoning and land use ordinances for the licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the cities of ... Lemon Grove ... deprives some qualified medical marijuana patients access to marijuana in their communities.*

Response to Finding No. 9:

The City of Lemon Grove disagrees with Finding No. 9 in that it finds that the lack of ordinances and zoning of cooperatives and collectives deprives some qualified medical marijuana patients of access to marijuana in their communities. Nothing prevents a "qualified patient" or a "primary caregiver" from growing or possessing medical marijuana. City of Lemon Grove zoning rules do not allow, as a permitted use, the establishment of any form of distribution operation, profit or non-profit, that distributes medical marijuana. Nothing in state law requires Lemon Grove to adopt land use or zoning regulations regarding distribution of medical marijuana. (Health & Safety Code §§ 11362.77(c) and 11362.83.)¹.

The City of Lemon Grove is unaware of any facts to verify that Finding No. 9 is true. No information has been supplied to the City through public testimony, correspondence or information contained in the Grand Jury Report that lack of Lemon Grove ordinances deprives medical marijuana patients access to marijuana.

¹ H&S § 11362.77(c). Cities may adopt guidelines allowing to exceed state limits.

H&S § 11362.83. Nothing in this article shall prevent a city ... from adopting and enforcing laws consistent with this article

Finding No. 11: *The imposition of regulatory fees and associated costs could create a financial hardship for the smaller medical marijuana cooperatives and collectives.*

Response to Finding No. 11:

The City of Lemon Grove agrees that the imposition of local fees and costs “could create a financial hardship” for some medical marijuana distributors. The establishment of a regulatory program would require fees and would generate City costs. The current policy of the City is to increase the regulatory fees to shift the burden of regulation from the taxpayers to those who benefit from a regulatory program. The City’s budget is not in a position to subsidize a new regulatory program at general taxpayer expense considering the current state of the local economy.

Recommendation No. 10-123: *Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.*

Response to Recommendation No. 10-123:

The City of Lemon Grove disagrees with the recommendation. The recommendation will not be implemented. Currently, there is no legal requirement that the City implement the recommendation. The City’s zoning code is a restrictive code that only allows uses that are specifically permitted by the zoning code or other city-wide regulations. Medical marijuana distribution sites are not a permitted use, and no formal request has been made by any person to change the municipal code to allow this use. The Compassionate Use Act does not mandate that a city must allow commercial or quasi-commercial operations to be established in its commercial areas.

The City of Lemon Grove does not prevent a “qualified patient” or the patient’s “primary caregiver” from growing and possessing marijuana for medical purposes. While “qualified patients” and “primary caregivers” may pool their efforts with other qualified individuals, Cities that have allowed regulated “non-profit” distribution centers in commercial areas have either had to establish a comprehensive regulatory program at significant general fund cost or allow the proliferation of unregulated “nonprofit” operations throughout their commercial areas. The Lemon Grove zoning code allows for a person to apply to change the zoning code to allow for a new use. No person has made a formal request to change the code in the manner requested by the Grand Jury.

The request of the Grand Jury does not address any actual review of the operations of Lemon Grove City government (see FOOTNOTE). The Grand Jury’s request is to recommend legislative changes to the Lemon Grove Municipal Code that would create a large regulatory program. The recommendation is not required by law and intrudes into the legislative prerogatives of the City. A new regulatory program would use scarce general fund revenues at a time when the City Council has been faced with difficult service cuts to its programs that benefit the general public. To our knowledge, the recommendations are not based on any information drawn from a specific review of the facts and circumstances in the City of Lemon Grove. Therefore, the City Council chooses not to implement the recommendation.

Recommendation No. 10-124: *Adopt regulations which would allow for the closure of all unlicensed “dispensaries.”*

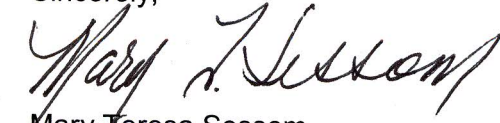
Response to Recommendation No. 10-124:

The City of Lemon Grove disagrees with the recommendation. The recommendation will not be implemented. Currently, there is no legal requirement that the City implement the recommendation. The City’s zoning code is a restrictive code that only allows uses that are

specifically permitted by the zoning code or other city-wide regulations. Medical marijuana distribution sites are not a permitted use, and no formal request has been made by any person to change the municipal code to allow this use. The Compassionate Use Act does not mandate that a city must allow commercial or quasi-commercial operations to be established in its commercial areas.

The recommendation presumes that there are illegal operations present in the City of Lemon Grove. The City Council is not aware of any "unlicensed dispensaries" within its city limits. If there are businesses that are not permitted within the boundaries of the City, the current code is sufficient to bring a nuisance action to abate the illegal business.

Sincerely,



Mary Teresa Sessom
Mayor

FOOTNOTE: To our knowledge, the Grand Jury request is not based on any examination of the "books and records" of the City of Lemon Grove. Further, this report is not based on the "operations" or "accounts" of the City. (See: California Penal Code Section 925a. "The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit...)